

***Town of Weare***  
ZONING BOARD OF ADJUSTMENT  
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**ZONING BOARD OF ADJUSTMENT  
MINUTES  
Tuesday, August 3, 2010  
\*\*FINAL COPY\*\***

**PRESENT:** Jack Dearborn, Chairman; David W. Ruoff, Vice Chairman; Forrest Esenwine, Member; June Purington, Member Neal Kurk, Alternate; ; Elwood Stagakis, Alternate; Chip Meany, Code Enforcement Officer; Sheila Savaria, Minutes Recorder.

**GUESTS:** Ginger Esenwine, Gerald Haynes, Charles Cleary, Douglas C. Graves Sr., Mary Graves, Brett Merrill, Bruce Merrill, Roger Keilig, Jeff Cloutier, Erik R. Newman, Art Siciliano

**I. INTRODUCTION:**

Chairman Dearborn called this meeting to order at 7:34 PM and asked the board members present to introduce themselves. Chairman Dearborn explained to those present the way by which the board conducts business.

**II. ADMINISTRATIVE ITEMS:**

Chairman Dearborn appointed Alternate Neal Kurk as a voting member for case #0610.

**III. PUBLIC HEARINGS:**

Case #0610      Roger Hardy Construction LLC  
Special Exception to Article 29-10  
The applicant wants to build a 5 unit industrial building in an aquifer  
Tax Map 412-170                      South side of Colby Road

Jeff Cloutier from North American Reserve, LLC spoke on behalf of Roger Hardy, about his plan for determining the disturbed area on the site for the proposed subdivision. Although he had no written plan, he explained that he is proposing to a series of test pits and trenches to establish the limits of the old dump site and determine what is buried in the ground. From that, he plans to make a field determination as to what contaminates, if any, should be sampled for. He will sample representative soil samples, and advance one of the test pits outside of the dump site to the water table so he can analyze the water.

Chairman Jack Dearborn says it is prudent on the boards' part to find out exactly what is going on with the property before they allow a use on it.

Neal Kurk asked if the Federal Environmental Protection Agency and/or the State Department of Environmental Services mandate that this site be cleaned or remediated before it can be used. Mr. Cloutier said it depends on what is found there. Once it is determined what is there, how extensive it is, and if it has impacted anything, then they can determine if the state will be involved. Regarding the limits, Mr. Cloutier said when they know the limits, they can put together a remediation plan, and there is no reason the site can't be developed. He can begin testing any day, and should be able to have the results for the next meeting.

Chairman Dearborn feels Roger Hardy should be responsible for that cost.

Erik J. Newman, a counsel for Roger Hardy, said if the proposal that Mr. Cloutier described is found to be reasonable, he can reduce it to a written proposal to submit to the town. The town could then have an independent consultant review it. Mr. Newman asked the board if there is some level of assurance that if he does that, there won't be any further issues. Mr. Newman feels it is unnecessary to have the town hire a professional, in addition to their own. Mr. Kurk suggests that Mr. Hardy allow the board to hire the sole expert, paid for by Mr. Hardy, who would then determine what should be done and report back to the board with recommendations on remediations and other issues. Mr. Newman said they would consider that.

Mr. Newman asked the board if they could make a decision at tonight's meeting that if the proposal they are offering is found to be satisfactory by the town's technical consultant, they could then proceed and carry out that plan without first having to come back to the board? He explained that this proposal is an initial investigatory scope which will yield results in terms of what is buried, and also ground and soil sampling results, which we would come back and present to the board. Mr. Kurk feels that is a reasonable request, but points out that even after all the talk and testing, if the test site is not good, Mr. Hardy will be losing money investigating this.

Chairman Dearborn summed up this meeting by saying that Mr. Hardy and his team need to come up with an RFP (a planned scope of work), the board needs to review the experts' results from that plan, and they need to be deemed acceptable by the town's expert.

Vice Chairman Ruoff moved to continue case #0610 until the next meeting; Forrest Esenwine seconded, all voted in favor.

Case #0810      Gerald Haynes 21 B&B Lane  
Special Exception from Article 29 section 10  
The applicant is requesting a special exception for the requirement  
for use in an aquifer protection overlay.

Jack Dearborn stepped down as Chairman for this case due to the fact he would be speaking about it as an abutter. Vice Chairman David Ruoff acted as Chairman for this case, and appointed Neal Kurk and Elwood Stagakis as voting members.

Charles Cleary, a legal counsel representing Gerald Haynes, spoke of the history of the property, the fact that it was in an industrial zone, and also in an aquifer zone. He presented articles that discussed the benefits of the virgin bark mulch, which is what Mr. Haynes stores and distributes from his facility. Mr. Cleary asked Roger Keilig, a Professional Engineer and Professional Geologist, to address the 4 points on the application. He also asked the planning board for their deferral on the 5<sup>th</sup> point on the application to the Planning Board, and consider making it a condition of the approval.

Roger Keilig, presented the site plan and aerial views of similar sites to give perspective of the site in question compared to others in terms of scale. Mr. Keilig also told the board that bark mulch is not a regulated material, and there is no EPA drinking water standard for tannin. Mr. Keilig explains that pavement would be beneficial for the management of the bark mulch facility because the machinery used will continuously dig up the ground, causing a disturbance.

Neal Kurk asked for clarification on exactly what the request was of the Zoning Board? Vice Chairman Ruoff explained that the request is to use the bark mulch business in the aquifer zone. Mr. Kurk asks Mr. Cleary if the board can ignore the rest of the application. Mr. Cleary said yes. Mr. Kurk then stated that on page 4 of

attachment A to the application for the zoning hearing, case #0810, the applicant is saying that the only request before the board is for an exception pursuant to section 29.10 of the zoning ordinance, and the information with respect to that is on page 4 of attachment A. Mr. Cleary said that is correct.

Neal Kurk states that he has a problem with the application because a lot of the information submitted is irrelevant. The application is confusing, and it is not clear what they are requesting. He feels the application is incomplete and should be rejected. Forrest Esenwine feels the problem is that there isn't a form for what they are asking for.

Forrest Esenwine motioned to accept the application for case #0810 as submitted; Neal Kurk seconded the motion. Discussion: Elwood Stagakis feels this case is not ready for a hearing, and there should be information from an expert to back up the claims. June points out that the board *may* require an expert if they see it is needed. Mr. Kurk points out that there are 2 issues. First, that the board accepts the application as complete, second, that the board gets the additional information that they want that will enable them to make a decision on the application. Three members voted in favor, Neal Kurk and Elwood Stagakis were opposed.

Vice Chairman Ruoff asked where the wood comes from. His products come from many places including saw mills in the area and in Canada. Gerald Haynes said that he gets raw wood products fairly small in size and breaks them down. It can come in as chips or bark that comes off the tree. It is processed to be broken down more. He does not use construction products. He does not use dyes. Vice Chairman Ruoff asked Mr. Cleary what permitted use it falls under. Mr. Cleary said that the permitted uses are broad, and believes the use is light manufacturing.

Neal Kurk feels the board needs their own expertise with respect to 29.10.1, paid for by the applicant, to determine whether or not the applicant's argument is true. With respect to 29.10.3, Mr. Kurk also feels an expert is needed because the use is in violation because it is clear that they are going to be discharging something other than household sewage, and possibly the disposal of toxic or hazardous waste. In regards to 29.10.4, he feels a great deal of additional information is needed to determine whether there is compliance. In section 29.3.2 about performance standards, Mr. Kurk feels the applicant has given almost no information about noise level and someone should do a true decibel test on the grinder when it's operating to determine whether in fact there is a noise and vibration problem that adversely affects the neighborhood. If the special exception is in violation with 25.6.2 (setbacks) 29.7 (buffer strips), or 29.7.2 (maximum lot coverage) the board should not approve the use.

Forrest Esenwine agrees with Mr. Kurk, but feels the job of the board should only be to determine if the use is allowed in an aquifer zone, and the questions the board is discussing is going beyond that.

Public Comment:

Douglas Graves, abutter, Gould Road: Mr. Graves is the author of the August 2 email sent to Chip Meany regarding this case. Mr. Graves is concerned about the noise the operation produces.

Jack Dearborn, abutter, 148 Gould Road: Mr. Dearborn stated that the district is industrial, and someone should decide what use is being requested, and if it's appropriate for that use. He states that he does not have an issue with bark mulch being processed on the site, but he does have a problem with it getting into the aquifer. If there is a way for Mr. Haynes to process the water and keep the noise and vibration on his property, Mr. Dearborn doesn't have a complaint. He feels it is irresponsible for the board to consider approving the use without some attempt to minimize and contain that noise on the property. Mr. Dearborn encourages the board to do a site walk and demonstration of the equipment they intend to use in the operation.

Mr. Kurk asked Mr. Dearborn if the entire operation took place within a structure with a roof so no water could

get on the bark mulch, and if the tub grinder were put in that structure, and if the structure were designed in such a way that the decibels at the property line were below whatever the appropriate level is, would he have a problem? Mr. Dearborn said No, because then it would be like the other industrial uses there.

Roger Keilig responded by saying the issues Mr. Dearborn is concerned with are issues that they are going to the Planning Board for. Mr. Keilig also discussed the 4 examples he found with similar uses. Mr. Kurk asked if the examples submitted had uses that were going on legally, or if it was permitted, were expanded beyond the permitted use? If they were permitted, that doesn't obligate the ZBA to use that as evidence. Mr. Cleary said that his client will take all necessary available steps, including implementing a storm water treatment system, to assure that no tannic acid will go into the ground water.

Mr. Cleary concluded by saying they are willing to address the issues of 29.10 and other issues people are concerned about, and they are willing to abide by any strictures placed on them to assure they do that.

Mr. Dearborn summed up his points by telling the board that a compliant use is needed, and requested that the board continue the case so there can be a site visit and demonstration of equipment which will provide insight into the issues. Mr. Cleary asked that the board deal only with the 29.10 issues, the rest should be heard before the Planning Board.

Mr. Kurk suggests that the board seek expertise to verify or contradict the statements made tonight. With respect to allowing the special exception for bark mulch processing, under 29.10.1, an expert should be hired to advise the board to whether or not tannin in the quantities being produced will affect the quality of the groundwater. If it is, the board needs to reject the use. Under 10.3, Mr. Kurk requests expertise to determine if it applies to drinking water. Under 10.4, he requests an expert on noise and vibration to determine if the noise being produced is excessive. In Mr. Kurk's opinion, the board also needs to consider if the use is in compliance with 25.7 & 25.6.2.

Neal Kurk moved for the board to exercise its authority under 29.10.5 to engage such professional assistance as it requires to adequately evaluate such reports, and evaluate, in general, the proposed use in light of the above criteria at applicants' expense. June Purington seconded the motion, all voted in favor.

June Purington moved to continue case #0810 until the September 7<sup>th</sup> Zoning Board meeting; Neal Kurk seconded, all voted in favor.

#### **IV. OTHER BUSINESS:**

David Ruoff informed the board that he received a correspondence from William Drescher on a number of cases.

Minutes: Forrest Esenwine moved to accept the minutes of July 6, 2010 meeting as distributed; June Purington seconded, all voted in favor.

Elwood Stagakis expressed to the board that documents being distributed at a meeting to support a case, should not be allowed. The documents should be distributed with the application, allowing the board members time to review them.

#### **V. ADJOURNMENT:**

As there was no further business to come before the board, Jack Dearborn moved to adjourn the meeting at 10:30 PM; David Ruoff seconded the motion, all in favor.

Respectfully submitted,  
Sheila R. Savaria,  
Minute Taker